

STATE OF MONTANA

Department of State Lands
and Investments

Chapter Sixty of the Laws

OF

The Twentieth Legislative Assembly

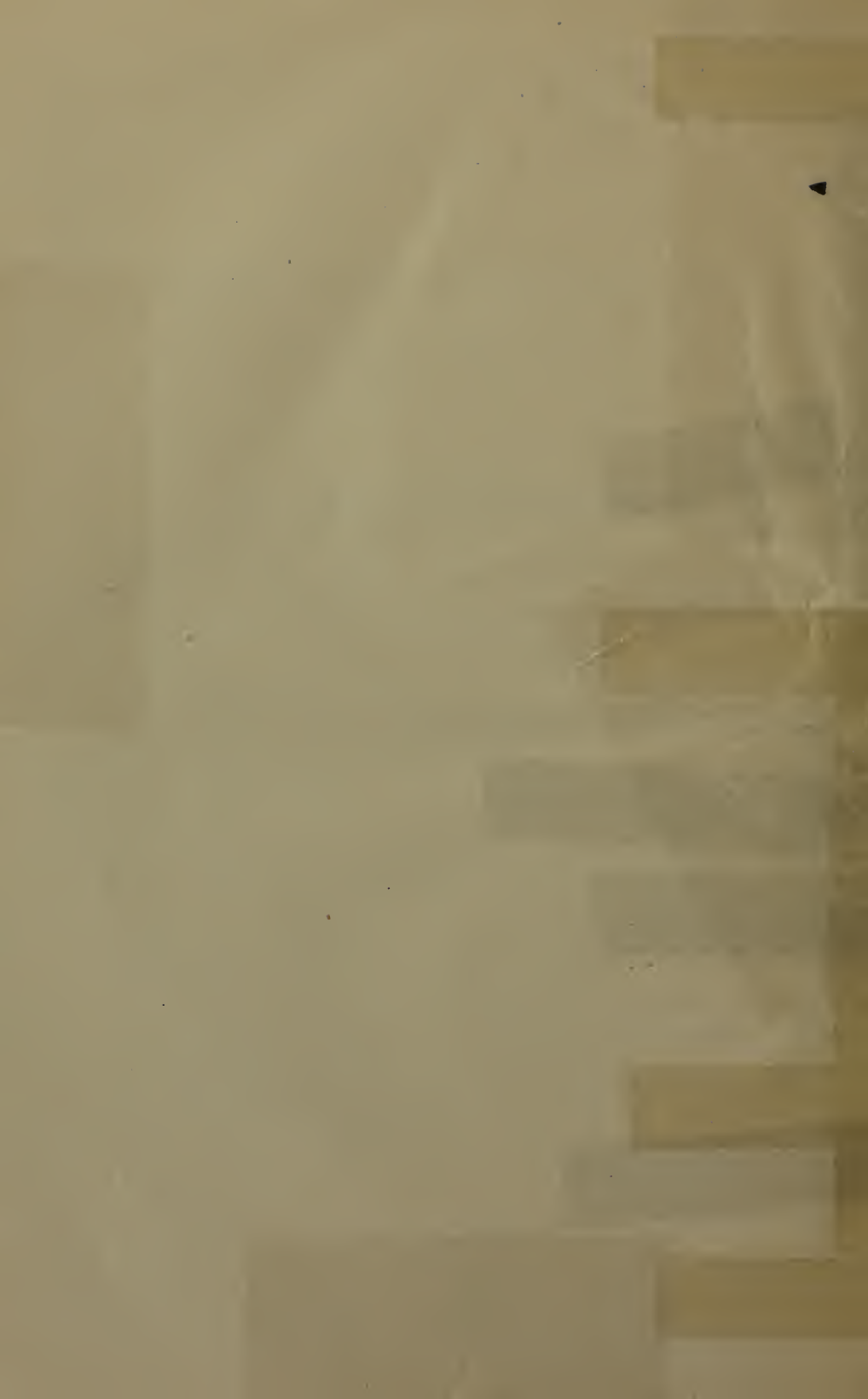
Effective July 1st, 1927

This Act re-organizes the State Land Department under the name of "The Department of State Lands and Investments," amends the main body of existing statutes governing its administration, and adds new statutes of far reaching importance. The Act does not embrace the subject of issuing oil and gas leases on State lands as that subject is covered by a separate Act embodied in Chapter 108 of the 1927 Session Laws. The former statutes governing state farm loans are left without amendment in so far as they relate to new farm loans. The laws relating to state forests are not amended by this act; neither is Chapter 189 of the 1925 Session Laws, commonly known as the Trespass Act. With these and a few minor exceptions, this Act contains all the statutes now in effect, dealing with the organization and administration of this department.

I. M. BRANDJORD

Commissioner of State Lands and Investments





SUMMARY OF CONTENTS

	Sections
Organization of Department.	1 to 4
The Commissioner, the State Forester, and other officers of the department	5 to 14
Selection, classification, appraisal and exchange of lands	15 to 19
Leasing of agricultural lands, grazing lands and town, city and other lots	20 to 37
Coal mining leases and permits	38 to 47
Prospecting permits and mining leases	48 to 51
Stone, gravel or sand leases and permits, etc.	52 to 55
Granting of easements for public purposes	56 to 63
Sale of State lands	64 to 97
General provisions concerning investments	98 to 105
Management and disposition of state farm loans made before this act takes effect	106 to 112
Miscellaneous provisions, fees, etc.	113 to 123

CHAPTER 60

An Act Creating the Department of State Lands and Investments; Making the State Board of Land Commissioners the Governing Board of This Department; Providing for the Appointment of a Commissioner of State Lands and Investments; Designating this Commissioner and the State Forester as the Chief Executive and Administrative Officers Under this Board; Providing Other Officers and Agencies to Assist in Carrying Out the Work of the Department; Prescribing the Powers and Duties of this Board and of All Officers, Employees, Agencies, and Persons Acting for or Under this Board in the Selecting, Classifying, Appraising, Use, Leasing, Exchange, Selling and Disposing of State Lands, and the General Care, Custody and Management of Such Lands; and in the Administration of Other Business Relating Thereto and Coming under this Department; in the Care, Custody, Investment and Management of the Funds Arising from Such Lands or Otherwise Subject to Their Control; Prescribing Some of Their Powers and Duties Under Article 21 of the Constitution; Fixing their Term of Service, Manner of Qualifying, Salaries, Emoluments and Compensation; Prescribing Fines and Penalties for Nonfeasance or Malfeasance in the Performance of Their Duties; and Repealing Section 207, Section 1805, Sections 1809 to 1829, Both Inclusive, Section 1840, Sections 1843 to 1871, Both Inclusive, Sections 1882 to 1911, Both Inclusive, Section 1918, All of such Sections being of the Revised Codes of Montana of 1921; and Section 4014 of the Revised Codes of Montana of 1921 as Amended by Chapter 147 of the Laws of the Eighteenth Legislative Assembly, and Chapter 94 of the Laws of the Eighteenth Legislative Assembly; and Chapters 90, 134, 168, and

SESSION LAWS

190 of the Laws of the Nineteenth Legislative Assembly, and also Repealing any Other Act or Part of Act in Conflict with the Provisions of this Act.

Be it enacted by the Legislative Assembly of the State of Montana:

PART ONE.

Department
created.

Section 1. Department of State Lands and Investments Created. Purpose. There is hereby created a department of the government of the State of Montana to be known and designated as the "Department of State Lands and Investments." The general purpose of this department shall be to administer the Federal Land Grants made to the State of Montana, and the other state lands, and the funds arising from these lands, and the funds coming under its control through the provisions of Article XXI of the State Constitution, or otherwise, as hereinafter more specifically provided.

Purpose.

Definitions.

Section 2. Definitions. In this Act, the term "department" shall mean the Department of State Lands and Investments; the term "Board" shall mean the State Board of Land Commissioners; the term "commissioner" shall mean the Commissioner of State Lands and Investments; the term "assistant commissioner" shall mean the Assistant Commissioner of State Lands and Investments; the term "state land" or "lands" shall mean and include all lands that have heretofore been granted and that hereafter may be granted to the State by the United States for educational purposes or for any other purpose, either directly or through exchange for other lands; all lands that have become the property of the State through deed or devise from any person; all lands to which the State has become the owner through a mortgage to the State, either by foreclosure or otherwise; and all lands that have become the property of the State through the operation of law, except, however, such of these lands as the State has sold and conveyed through the issuance of patent; and except also lands that are used as building sites, campus grounds, or for experimental purposes by any of the State Institutions, and has become the property of such institution; the term "mortgage land" or "mortgage lands" shall mean land or lands to which the State has become the owner through a mortgage thereon either by foreclosure or otherwise.

Section 3. **Powers and Duties of the Board.** The State Board of Land Commissioners, consisting of the Governor, Superintendent of Public Instruction, Secretary of State and Attorney General, as provided by the Constitution, shall be the governing board of the Department of State Lands and Investments; it shall have and exercise general authority, direction and control over the care, management and disposition of all state lands and the funds arising from the leasing, use, sale and disposition of such lands or otherwise coming under its administration. In the exercise of these powers, the guiding rule and principle shall be that these lands and funds are held in trust for the support of education, and for the attainment of other worthy objects helpful to the well being of the people of this State; and that it is the duty of the board so to administer this trust as to secure the largest measure of legitimate and reasonable advantage to the State. The enumeration in this Act of specific powers conferred upon the board shall not be so construed as to deprive the board of other powers not enumerated but inherent in the general and discretionary powers conferred by the Constitution, and necessary for the proper discharge of its duties; but there can be no such implied powers inconsistent with any part of the Constitution, nor shall any inherent powers be assumed to exist which would be inconsistent with any statutory provision or with the general rule and principle herein stated.

Powers and duties.

Section 4. **Meetings of the Board; Preservation of Records.** The board shall hold regular meetings on the second Wednesday of each month, and may hold special meetings whenever deemed necessary, upon call of the president or a majority of the members. Three members of the board shall constitute a quorum for the transaction of business. The Governor shall be the president of the board; in his absence and the absence of the Lieutenant Governor, the Superintendent of Public Instruction shall preside. The board may adopt whatever rules and regulations it deems proper for the conduct of its meetings. It shall cause complete minutes to be kept of its proceedings in a suitable book provided for that purpose and all important documents, maps, plats and papers to be properly cared for and preserved.

Meetings.

Records.

SESSION LAWS

PART TWO.

The Commissioner, the State Forester; Their Powers and Duties.

Commissioner.

Appointment.

Section 5. **Appointment of Commissioner; Manner of Qualifying.** The Governor, by and with the consent of the Senate, shall appoint a Commissioner of State Lands and Investments, who shall be the chief administrative and executive officer under the board in all matters except those pertaining to the state forests, who shall not be a member of the State Board of Land Commissioners and whose term of office shall be four years, or until his successor has been appointed and qualified. Before assuming the duties of his office, the commissioner shall take and subscribe to the constitutional oath of office and shall provide a surety company bond in the amount of Twenty-five Thousand Dollars (\$25,000.00) conditioned for the faithful discharge of his duties, which bond shall be subject to the approval of the board and filed with the Secretary of State; the premium thereon shall be paid by the State as the bonds of other state officials.

Qualifying.

Forester.

Section 6. **State Forester.** The State Forester shall be the chief administrative and executive officer under the board in all matters pertaining to the state forests. His powers, duties, qualifications, compensation and entire status shall be as now provided by law.

Appointive powers.

Section 7. **Appointive Powers of Commissioner; Management of Office.** The commissioner shall have the authority to appoint one assistant commissioner, one cashier, one secretary, one chief field agent, and such number of assistant field agents, clerks, stenographers and other employees as he may deem necessary for the proper performance of the work of his office, subject, however, to the approval of the State Board of Examiners as to the number of clerks and stenographers and employees. He shall also have authority to prescribe rules and regulations, not inconsistent with law, for the organization and management of his office, for the conduct of the office and field forces, for the distribution and performance of its business, and the custody, use and preservation of its records, papers, books, documents, equipment and other property.

Management.

Section 8. **Powers and Duties of Commissioner; Ex-Officio Secretary of the Board.** He shall be ex-officio the secretary of the State Board of Land Commissioners, keep the minutes of its proceedings, be the custodian of its seal and records and carry out its orders. Under the direction of the board and all legal provisions governing such business, and through the proper officers, agencies and persons herein provided, he shall have charge of the selecting, exchange, classification, appraisal, leasing, management, sale and other disposition of the state lands and the investment of the funds arising therefrom or otherwise coming under the administration of the department. He shall perform such other duties as the board may direct, the purpose of the department seems to demand, or the statutes require. He shall collect and receive all moneys payable to the State through his office as fees, rentals, royalties, interest, penalties, payments on mortgages or lands purchased from the State or derived from any other source, and shall issue triplicate receipts for each and all of such payments, one of which shall be mailed or delivered to the payor, and one retained in his office. On or before the fifteenth day of each month and also on or before the thirtieth day of each month he shall report and pay over to the State Treasurer all moneys received since the last previous settlement for which final receipts have been issued; at the same time he shall turn over to the State Auditor all triplicates of the receipts issued during that period.

Powers and duties of commissioner.

Ex-officio Secretary.

Section 9. **Reports by State Treasurer.** On or before the tenth day of each calendar month, the State Treasurer shall report to the commissioner the amount of money received by him during the preceding month from each source, except from the commissioner, for each income fund and each permanent fund arising from a federal land grant or otherwise under the control of the State Board of Land Commissioners; also the amount paid out from each such income fund or permanent fund during such month and the object of such payment; and also the balance uninvested in each such fund; these reports shall be on such forms and contain such additional information as the commissioner shall prescribe and the board approve.

State Treasurer reports.

Section 10. **Biennial Report by Commissioner.** On or before the first day of December of each even numbered year the commissioner shall prepare and publish a report

giving summaries of all important transactions of his office during the two preceding fiscal years terminating on June 30th of that year, and also showing fully the amount of all assets belonging to each of the permanent funds and income funds under the administration of the department as of that date, together with such other information relating to the affairs of the department as the board or the commissioner may deem worthy of publication. He shall also from time to time furnish such information and make such additional reports as the good of the department may seem to demand or the board require.

Assistant
commissioner
duties.

Section 11. Duties of Assistant Commissioner. The assistant commissioner of state lands and investments shall perform such work, services and duties as the commissioner may from time to time designate; during the absence or disability of the commissioner he shall perform all the duties of the commissioner.

Chief field
agent duties.

Section 12. Duties of Chief Field Agent. Under the direction of the commissioner, the chief field agent shall have charge of all the field work of the department, except the work falling under the office of the state forester, and shall perform such additional services and duties as the commissioner may from time to time designate.

Oath of
office.

Section 13. Oath of Office and Bonds. The assistant commissioner, the chief field agent, and the cashier shall each take and subscribe to the constitutional oath of office before entering upon his duties and shall provide a surety company bond conditioned for the faithful discharge of his duties, which bonds shall be in such amount as the State Board of Land Commissioners may designate, the bonds to be approved by the State Board of Land Commissioners and filed with the Secretary of State. The premium on such bonds shall be paid by the State as other bonds of state officials. The board may require any other officer or employee of the department to furnish a surety company bond in such amount as it may designate.

Surety bond.

Salaries.

Section 14. Salaries and Compensation. Persons Now Appointed to Hold Office During Terms for Which Appointed. Appropriations. The salary of the Commissioner shall be Thirty-Six Hundred Dollars (\$3600.00) per annum; the salary of the assistant commissioner

TWENTIETH LEGISLATIVE ASSEMBLY.

shall be Twenty-Four Hundred Dollars (\$2400.00) per annum; and the salary of the chief field agent shall be Three Thousand Two Hundred and Fifty Dollars (\$3250.00) per annum. The salaries of each one of these three officials and of all clerks and stenographers and field men and other employees of the department shall be payable monthly from the state general fund. In addition to these salaries, each one of the aforesaid officers shall be paid actual and necessary expenses while engaged in the performance of his official duties outside the state capital.

The persons now appointed, qualified and acting as register of state lands, deputy register of state lands, and as state land agent shall respectively serve as commissioner of state lands and investments, as assistant commissioner of state lands and investments, and as chief field agent during the terms for which they have been appointed as register of state lands, as deputy register of state lands, and as state land agent.

All balances of appropriations made for the office of register of state lands and for the office of the state land agent for the fiscal year ending June 30th, 1927, and all appropriations for these two offices for the two ensuing fiscal years terminating June 30th, 1929, shall be deemed appropriations for the office of the commissioner of state lands and the chief field agent and shall be available for the use of such offices and officers.

The salaries and compensations of all the other officers, agents and employees of the department shall be fixed by the State Board of Examiners and paid from the state general fund, but if such board fails to fix the same, then the commissioner may determine the amount of their compensation. No employee of the department of state lands and investments who is paid a fixed compensation shall receive pay for any extra services rendered by him unless expressly authorized by law.

PART THREE.

Selection, Classification, Appraisal and Exchange of Lands.

Section 15. **Selection.** Under the general direction of the State Board of Land Commissioners and as rapidly as the appropriations for the work will permit, the com- Selection.

missioner shall with all reasonable diligence cause to be selected and located all lands, except timber lands, which have heretofore been granted or which may hereafter be granted to this State by the United States for any purpose whatsoever, and not located by the grant itself. He shall also with all due diligence cause to be selected and located lands in lieu of all those lands in Sections Sixteen and Thirty-Six and in the other Federal Land Grants which for any reason whatsoever have been lost to the State; he shall cause to be performed without any unnecessary delay on his part all work necessary for the completion of these selections so that the State may actually receive all the lands under its various grants. All selections and lieu selections shall as far as possible be in legal subdivisions. In the selection and location of these lands, careful attention shall be given to the water available and which may be appropriated for such lands for domestic use, livestock and irrigation.

Classification.

Section 16. **Classification.** The lands of the State of Montana shall be classified according to the provisions of the Constitution as follows:

Class 1. Grazing lands, being all those lands which are valuable only for grazing purposes.

Class 2. Timber lands, being all those lands which are principally valuable for the timber that is on them.

Class 3. Agricultural lands.

Class 4. Lands within the limits of any town or city or within three miles of such limits.

The third class, agricultural lands, shall be subdivided into two classes as follows:

(a) Irrigable lands.

(b) Non-irrigable lands.

The fourth class shall be subdivided as follows:

(a) Lands within the limits of any town or city.

(b) Lands not within such limits but within three miles thereof.

The classification shall be so made as to place each forty-acre tract or lot in the class to which it properly belongs.

TWENTIETH LEGISLATIVE ASSEMBLY

Whenever lands formerly non-irrigable have become irrigable, and whenever new towns or cities are located and platted, and in all other cases when the board deems it necessary, the lands affected shall be reclassified so that no state land will be sold under a different classification from that to which it actually belongs.

Reclassification.

All field books, plats, maps and records of the department shall show the class to which each tract therein belongs, and they shall also show whether it belongs to the public schools of the State or to what state institutions or other entity it belongs according to the grant or instrument by which title to such land has passed to the State of Montana; they shall also show whether or not the coal or other minerals in the land are reserved by the United States, and shall contain such further information as the commissioner may deem necessary.

Records.

Section 17. **Appraisal.** All lands of the State shall be appraised at their true and full value as nearly as the same can be ascertained. In determining and fixing such value temporary inflations or depressions in land prices or fluctuations in the economic and financial conditions of the State shall not be taken into account. The average annual value of the crop or crops that the land is capable of producing through a long series of years shall be the main basis for such valuation; but consideration shall also be given to every other known element that has a permanent bearing on the value.

Appraisal.

In all appraisals hereafter made there shall be one and only one kind of value placed on each tract of land at the same time, and this value shall be used as the basis both for the rental and the sale of such land, subject to all constitutional limitations.

Placing of values.

The completed appraisal of state lands for any one county shall show the average appraised value of each class of land in such county, and shall contain such additional information as the board may from time to time direct.

Average value.

No reappraisal of state lands, except of town lots, shall hereafter be made before such average appraised values in the county to be appraised have been available and considered by the board and the necessity for such reappraisal determined by it, provided, however, that the board shall have the power to correct errors and

When reappraised.

Mortgage land.

adjust inequalities in appraisements when it has been shown to the satisfaction of the board that such errors or inequalities actually exist; and provided, further, that the board may cause mortgaged land to be re-appraised without re-appraising other state lands in the county or counties in which they are located. The board itself shall have the power to raise or lower the appraised value of any class of state land in any county on a percentage basis, uniform for the entire county, whenever it is deemed necessary to make such change in order to make the appraisal value represent the true and full value.

Rules.

Section 18. **Board to Prescribe Further Rules for Appraisal.** The board shall prescribe such further rules and regulations for the appraisal of state lands as it may deem necessary, not inconsistent with the provisions of this Act or the State Constitution.

Exchange of lands.

Section 19. **Exchange of State Lands.** The state board of land commissioners of the State of Montana is hereby authorized and empowered to enter into contracts or agreements with the United States, or any department thereof having jurisdiction, for the waiving and relinquishment to the United States of any and all rights of the State of Montana in and to Sections 16 and 36 of any township and to any other sections of state lands when such sections are situated within or adjoining a federal forest reserve, or within or adjoining other federal land reservations, provided that the State of Montana shall in lieu of the rights so waived and relinquished receive from the United States other lands of an equal area and not inferior in value. The lands so obtained by the State of Montana from the Federal Government in exchange for lands to which the State has waived and relinquished its rights shall preferably be forest lands, it being the main purpose of these provisions to enable both the United States and the State of Montana to consolidate its forest holdings; but if desirable forest land cannot be obtained for such state lands, then other lands may be selected.

Contracts.

All contracts and agreements heretofore entered into between the State Board of Land Commissioners and the United States, or any department thereof, waiving and relinquishing the rights of the State of Montana to Sections 16 and 36 in any township in this State, and

the selection of lands in lieu of those so relinquished by the State are hereby ratified, confirmed and validated.

PART FOUR.

Leasing of Agricultural Lands, Grazing Lands and Town, City and Other Lots.

Section 20. Leasing of Agricultural and Grazing Lands and Town and City Lots. Under the general direction and control of the board, the Commissioners shall lease all agricultural and grazing lands and all town and city lots open to leasing upon proper application and the payment of rental as hereinafter more specifically provided. In all cases where there is only one qualified person offering to lease any one tract of land, the lease shall be issued at the minimum rental as determined under the provisions of this Act, but if there are two or more persons desiring to lease the same tract, then the lease shall be issued to the highest bidder, subject, however, to the preference right of a former lessee as provided in this Act. All agricultural, grazing and town lot leases shall be subject to the condition that the Board may in its discretion, offer said land for sale at any of the regular public sales of State lands held in the county where the land is situated, upon the same terms, and in the same manner as land not under lease.

Leases.

Section 21. Renewal of Leases. Cancellation Before Expiration. A lessee who has paid all rentals due from him to the State and not violated the terms of his lease shall be entitled to have his lease renewed at any time within thirty (30) days prior to its expiration for an additional period of not exceeding five (5) years.

Renewal
of leases.

Cancellation.

Section 22. Arbitrators to Fix Value of Improvements. Appeal. If the owner of any improvements on State lands desires to sell such improvements to the new lessee and they are unable to agree on the value thereof, such value shall be ascertained and fixed by three (3) arbitrators, one of which shall be appointed by the owner of the improvements, one by the new Lessee and the third by the two (2) arbitrators so appointed. The reasonable compensation that such arbitrators may charge shall be paid in equal shares by the owner of the improvements and the new lessee. The value of such improvements so ascertained and fixed shall be binding

Arbitrators
to fix values.

on both parties; provided, however, that if either party is dissatisfied with the valuation so fixed, he may within ten (10) days appeal from their decision to the commissioner who shall thereupon cause the chief field agent or assistant field agent to examine such improvements and whose decision shall be final. The commissioner shall charge and collect the actual cost of such re-examination to the owner and the new lessee in such proportion as in his judgment justice may demand. The value of such improvements shall be ascertained and fixed as hereinafter and in this Act provided.

Section 23. Who May Lease, How Much, and for What Length of Time. No person shall be qualified to lease State lands, except one who is the head of a family, unless he or she has attained the age of twenty-one (21) years; no person or company shall be entitled to hold under lease more than one (1) section of land at any one time, and no lease to agricultural or grazing lands or town or city lots shall be for a longer period of time than five (5) years; provided, however, that any qualified lessee may lease and hold any quantity of lands acquired by the State through the foreclosure of mortgages or acquired otherwise in connection with a mortgage to the State.

Section 24. Lease Expiration Dates. All leases for agricultural lands, grazing lands and town and city lots hereafter issued no matter on what date issued, shall expire on February 28 within five (5) years from the date on which the lease becomes effective.

Section 25. Rental. How Determined. The minimum annual rental for agricultural purposes shall be five per centum (5%) of the appraised valuation of such lands but in no case less than fifty cents (50c) per acre. The maximum annual grazing rental for State land shall not exceed One Hundred Dollars (\$100.00) per section, except where the leasing price is increased above this sum by competitive bidding. For the purpose of determining the rental price of grazing lands they shall be classified as follows:

Classifications.

Class 1. Extra good grazing land Seventy Dollars (\$70.00) to One Hundred Dollars (\$100.00).

Class 2. Good grazing land, well sodded with grass Sixty Dollars (\$60.00).

TWENTIETH LEGISLATIVE ASSEMBLY

Class 3. Fair grazing land, with medium grass Fifty Dollars (\$50.00).

Class 4. Poor grazing land, thinly grassed Forty Dollars (\$40.00).

Provided further that until the lands in any county have been appraised under the provisions of this Act, the minimum annual rentals for grazing lands in such county shall remain six and one-fourth per centum ($6\frac{1}{4}\%$) of the so-called grazing valuation thereof according to the long established usage of the State Land Office.

Rentals for fractional years, terminating on February 28 next following the date of issue, on agricultural and grazing lands shall be computed and collected as follows:

Rentals
for fractional
years.

Leases beginning in:	Agricultural rental Percentage of full year's rental	Grazing rental, Percentage of full year's rental
March	100%	100%
April	100%	100%
May	90%	90%
June	80%	80%
July	70%	70%
August	50%	50%
September	50% of grazing rental for both agricultural and grazing leases.	
October	40% of grazing rental for both agricultural and grazing leases.	
November	30% of grazing rental for both agricultural and grazing leases.	
December	20% of grazing rental for both agricultural and grazing leases.	
January	10% of grazing rental for both agricultural and grazing leases.	
February	5% of grazing rental for both agricultural and grazing leases.	

Agricultural
rentals when
collected.

Agricultural rentals shall apply and be charged and collected when the land is leased for or used for the raising of grain of any description, potatoes, beets or other cultivated crops, or for raising and harvesting alfalfa, clover, timothy or other grasses, or for other crops gathered or harvested from the land except that the grazing rates only shall be charged for summer fallowed land. Grazing rentals shall apply when the lands are used exclusively for pasture or grazing.

The minimum annual rental for town, city and other lots shall be five per centum (5%) of the appraised value thereof, calculated at the same rate per month for all seasons of the year. The appraisal of mortgage lands for purposes of fixing grazing rates shall not constitute an appraisal for purposes of sale.

Rental fees.

Section 26. **Rental, When Due.** The rental for the first year of the lease and the fee of Two Dollars and fifty cents (\$2.50) for issuing the lease shall be paid at or before the time of the execution of the lease; provided, however, that in the case of all leases which take effect on and after October 1 and before the expiration of the coming February, both the rental for the fractional year and for the next full year beginning March 1, shall be paid and collected at the time of issuing the lease. The rental for each succeeding year on leases hereafter issued shall become due and payable to the Commissioner of State Lands and Investments on December 15 next preceding the rental year to which the rental applies and if not paid on or before February 1 next following, this non-payment shall have the effect of cancelling the lease from and after February 28 of that year. The Commissioner shall notify the lessee by letter addressed to the postoffice address given in the lease of such cancellation, and the land shall then be open for lease to other applicants.

When due.

How leased.

Compact bodies.

Section 27. **Land to Be Leased in Compact Bodies.** All lands are to be leased in as compact bodies as possible and care shall be taken not to separate parts of any section from the section lines or public highways or from any available water supply, or in such form as to make it more difficult to lease the remaining State lands in the section in which they are located. In case there are applications or bids for renting certain land for

grazing purposes and also applications or bids for renting the same land for agricultural purposes, an agricultural lease shall be issued; that bid or application shall be accepted which will bring the largest revenue to the State.

Section 28. **Change in Terms of Lease.** Whenever any land is leased for grazing purposes, and the lessee desires to cultivate any part of the land, he shall before doing any such cultivation, make application to the Commissioner stating how much land he desires to cultivate, showing the location in the section of such land, send his lease to the Commissioner to have the necessary changes made therein, and shall pay to the Commissioner one (1) year's agricultural rental for the land to be cultivated, which agricultural rental shall be additional to the grazing rental for such land, and shall be paid annually when the rentals become due for each remaining year of the lease, whether the lessee continues to cultivate such part or not, it being the intention of this provision to protect the interests of the State and to induce lessees to have the leases originally issued for the usage intended to be made of the land. In case any person shall cultivate lands leased for grazing purposes, without having first secured the right to do so in the manner herein provided, he shall be liable for twice the regular agricultural rental on the land so cultivated in addition to the grazing rental thereof. The provisions of this section shall be incorporated in every lease.

Change in terms.

Section 29. **Form of Lease. Bond.** The general form of lease to State lands shall be prescribed by the State Board of Land Commissioners and no changes in the form for such leases shall be made without the approval of the said Board. All leases shall be issued in duplicate, one (1) copy shall be mailed to the lessee, and one (1) copy shall be preserved by the Commissioner and entered in a suitable book provided for that purpose. Unless the Board decides otherwise, these leases shall be issued without bonds; but the Board shall have the right to require a bond and to prescribe the form and conditions thereof whenever it deems it necessary.

Form of lease.

Bond.

Section 30. **Share Rent.** The Board may whenever it deems it advisable, and under such regulations as it may prescribe, authorize the leasing of agricultural lands for a share of the crops delivered at the grain elevator

Rentals by shares.

or market, which share shall not be less than what is commonly paid by lessees of privately owned lands as share rent in the locality where the State land is situated; and in no case shall such share rental be less than one-fifth (1-5) of the entire crop raised, delivered at the elevator.

Liens on
crops.

Section 31. Liens on Crops and Improvements. The State shall have a lien upon all crops growing upon any of its lands, and also upon such crops after they have been separated from the lands for any and all rentals and penalties due or delinquent under the lease on such lands, or becoming due during the calendar year in which such crops are harvested, for any year or part of year that the land has been held or used by the lessee; such lien shall also apply to all buildings, structures, fences and all other improvements, shall be prior and superior to all other liens, excepting threshermen's liens and seed liens as specified in Sections 8355 and 8366 of the Revised Codes of Montana, 1921 which shall have priority as specified in Chapter 116 of the Session Laws of 1925, and is hereby expressly reserved. - Any person purchasing or otherwise acquiring any of such crops or improvements takes the same subject to such lien. Any agent or representative of the department, or the sheriff of the county in which the land is located, or his deputy, may demand of the lessee, or his agent, payment of the amounts due the State, and if the same are not paid upon such demand, the officer, making such demand, or any person or representative of the department, may seize, sell and dispose of, either at private or public sale, upon giving notice for not less than three (3) days of such sale, sufficient of the said crops or improvements, or of both, to pay the amounts due the State together with costs and expenses of seizure and sale. These provisions relating to liens on crops and improvements shall be embodied in all leases for agricultural and grazing lands and for town, city or other lots.

Improvements.

Section 32. Leases May Be Assigned. Preference. Sub-Leasing. Actual Users to Be Given Preference. Leases to State Lands may be assigned on blanks provided for that purpose by the Commissioner, but no such assignment shall be binding on the State unless the assignment is filed with the Commissioner, approved by him and payment made of the assignment fee of One

Assignments.

Dollar (\$1.00). Preference shall always be given to the applicant who wants the land for his own individual use so that the full advantage coming from the leasing and use of such lands may reach those who actually till the soil, and so that they shall not be compelled to pay a higher rental than that due the State. If a lessee sub-leases State lands on terms less advantageous to the sub-lessee than the terms given by the State, his lease shall be subject to cancellation by the State Board of Land Commissioners after hearing, duly held on the facts involved.

Preference.

Sub-leases.

Section 33. Acquisition of Water Right by Lessee.

The lessee of State lands may at any time prior to one (1) year before the expiration of his lease make application to the Board for permission to secure a water right to the land under his lease. Such application shall be in writing, shall show how much of the land can be irrigated, the permanency of the water supply and the probable cost of placing the land under irrigation. If the proposed plan meets with the approval of the Board, permission shall be granted the lessee to secure the desired water right for the land and to place the same under irrigation. If such water right becomes a permanent and valuable improvement, then in case of the sale or lease of the lands to other parties, the former lessee shall be entitled to receive compensation in the amount of the reasonable value thereof, as in the case of other improvements, from the new lessee or the purchaser. These provisions shall not be so construed as to make the State liable to the lessee for the payment of the cost or value of such irrigation improvements.

Acquisition of
water rights.

Section 34. Compensation for Improvements. A lessee of State lands shall have the right to place a reasonably amount of improvements upon the lands leased by him, which improvements may consist of fences, cultivation and improvement of the land itself, irrigation ditches, houses, sheds, wells and reservoirs, and similar improvements. Whenever another person becomes the lessee of such lands, he shall pay to the former lessee the reasonable value of such improvements at the time the new lessee takes possession thereof. Provided, however, that if any of the improvements consists of breaking (meaning the original plowing of the land), and one (1) years crops has been raised on the land after the breaking thereof, the compensation for such breaking

Improvements.

Compensation

shall not exceed the sum of Two Dollars and fifty cents (\$2.50) per acre, and that in case two (2) or more crops have been raised on the land after the breaking thereof, then in such case the breaking shall not be considered as an improvement to the land. In case the former lessee and the new lessee are unable to agree on the reasonable value of such improvements, then such value shall be ascertained and fixed as provided in this Act.

**Valuation of
improvements.**

In determining the value of these improvements consideration shall be given not only to the original cost but also to the present condition thereof and to their suitability for the uses ordinarily made of the lands on which they are located, and also to the general state of cultivation of the land, its productive capacity as effected by former use and also to its condition with reference to noxious weeds whether it is infested with such weeds or free from these pests. Consideration shall be given to all actual improvements and to all known effects that the use and occupancy of the land have had upon its productive capacity and desirableness for the new lessee. The former lessee may, however, remove or dispose of the movable improvements on the land to other parties than the lessee; but if he fails to remove such improvements from the land within sixty (60) days from the date of the expiration of his lease, then all of such improvements shall become the property of the State unless the Commissioner for good cause shown shall grant additional time for the removal thereof.

Before a lease is issued to the new lessee he shall show that he has paid the former lessee the value of the improvements as agreed upon by them or as fixed and determined under the provisions of Section 22 of this Act or that he has offered to pay the value of such improvements as so fixed and determined or that the former lessee elects to remove the improvements.

**Former lessee
preference
right.**

Section 35. Preference Right of Former Lessee. The holder of a lease to State lands, who has paid his rentals when due and has not in any way violated the provisions of his lease, shall at the expiration of such lease have the preference right to lease the lands covered by his former lease to the extent that he may take the lease at the highest bid made by any other applicant.

Section 36. **Cancellation of Leases.** The Board shall have the power and authority in its discretion to cancel a lease for any of the following causes: For fraud or misrepresentation, or for concealment of facts relating to its issue, which if known would have prevented its issue in the form or to the party issued; for using the land for other purposes than those authorized by the lease, and for any other cause which in the judgment of the Board makes the cancellation of the lease necessary in order to do justice to all parties concerned and to protect the interests of the State. Such cancellation shall not entitle the lessee to any refundment of rentals paid or exemption from the payment of any rentals, penalties or other compensation due the State.

Leases how
cancelled.

Section 37. **Leasing Regulations.** The State Board of Land Commissioners shall have the power, and it is hereby made its duty, to formulate and prescribe such additional rules and regulations relating to the leasing of State lands, not inconsistent with the provisions of this Act, as it may from time to time deem necessary in order that the use and proceeds of these lands may contribute in the highest attainable measure to the purposes for which they have been granted to the State of Montana.

Regulations
for leasing.

PART FIVE.—A.

Coal Mining Leases and Permits.

Section 38. **Coal Mining Leases.** The State Board of Land Commissioners is hereby authorized and empowered to lease in such manner as it may deem for the best interests of the State any state lands to which the title has vested in the State and in which the coal or coal rights are not reserved by the United States for exploring for, mining, removing, selling and disposing of the coal therein upon the terms and conditions herein stated, and subject to such rules and regulations as the board may prescribe. This power and authority to lease State lands for coal mining purposes shall extend to and include all lands owned by the State no matter in what manner acquired and shall also extend to and include all those State lands which have been sold but in which the coal rights have been reserved by the State of Montana, whether such lands are under certificate of purchase or patents have been issued; but in such cases and in all cases where the lands are under lease for grazing, agriculture or similar purposes, care shall be taken in

Coal mining
leases.

SESSION LAWS

issuing the coal mining lease to protect the rights of the purchaser or lessee.

Conditions.

All such coal leases shall be subject to the condition that the coal must be mined, handled and marketed in such manner as to prevent as far as possible all waste of coal and shall also be subject to the condition that the mining operations shall be carried on in such systematic and orderly manner as not to make subsequent mining operations more difficult or expensive. Violations of these conditions shall constitute grounds for the forfeiture of the lease, after hearing had thereon before the State Board of Land Commissioners.

Section per person.

Section 39. Not More Than One Section May Be Leased to One Person. Term. Fee. No person, co-partnership, company or corporation shall be entitled to lease more than one (1) section of land for coal mining purposes, and no lease shall be issued for a longer term than five (5) years, but the Board may establish such rules and regulations for the renewal of a lease at the expiration of the term as it may deem proper and necessary. The Board shall prescribe the form of the lease; the fee for issuing the lease and approving the bond hereinafter provided shall be Two Dollars and fifty cents (\$2.50) payable to the Commissioner.

Term.

Price.

Royalty.

Section 40. Royalty. The compensation of the State under all coal mining leases shall be upon a royalty basis and shall be fixed and determined by the Board. The amount of such royalty shall be based upon the kind, grade and character of the coal in each particular mine, upon the size, shape and nature of the coal vein, strata or body, and upon the shipping and marketing facilities for the product. Consideration shall also be given to every other known factor effecting the value of each particular coal mining lease; but in no case shall the royalty for the coal mined be less than twelve and one-half (12½) cents per ton of Two Thousand (2,000) pounds.

Application.

Section 41. Application; Deposit. The application for a coal mining lease shall be in writing, shall state the quantity of coal that it is proposed to mine under such lease during the first year thereof and during each subsequent year as nearly as the applicant can estimate such quantity and shall contain such further information as the Board may require. If the Board grants the application, it shall fix the royalty per ton and shall de-

TWENTIETH LEGISLATIVE ASSEMBLY

mand from the applicant a deposit of not less than the amount of the royalty on the estimated average production for one (1) month of the lease and it may at its discretion ask for such larger deposit as it may under the circumstances deem necessary in order to protect the interests of the State; but this deposit shall in no case be less than Fifty Dollars (\$50.00).

Deposit.

This deposit shall be credited to the lease and held intact to the end of the first year. If all the royalties for such year have been paid and are equal to or exceed such deposit then the deposit shall be held intact for the credit of the lessee for the subsequent year or years; but if the royalties accrued and paid during the first year or any subsequent year amount to less than the amount of such deposit, then the difference between the amount of the royalties paid and the deposit shall be deducted therefrom and charged as rent or royalty for the lease for that year so that the annual rental will never be less than the amount of the cash deposit determined upon by the Board and in no case less than Fifty Dollars (\$50.00) per annum. At the beginning of the second year or any subsequent year of the lease, the lessee shall make such additional deposit as will bring the unused portion of his deposit up to the original amount as fixed by the Board.

Section 42. **Bond.** The Board shall also demand a surety company bond in such form and amount as it may determine conditioned for the payment of all royalties due the State and for the carrying on of the mining operations according to the terms of the lease; but a lessee may in lieu of furnishing a surety company bond increase the cash deposit hereinbefore provided for to such an amount as will in the judgment of the Board make the furnishing of a bond unnecessary.

Bond.

Section 43. **Improvements of Former Lessee.** Whenever a coal mining lease is applied for on land where mining operations have been carried on by a former lessee and there are surface or underground improvements on the land used at such former operations, disposition shall be made of such improvements satisfactory to the Board before a new lease is issued. If the owner of such improvement desires to sell the same to the new lessee, then the new lessee shall pay him the reasonable value thereof as far as they are suitable for the new mining operations. If they fail to agree, on the value of

Improvements
of former
lessee.

such improvements, then such value shall be ascertained and fixed as provided in Section 22 of this Act.

New lessee to pay improvements.

Before a new lease is issued, the applicant shall show to the satisfaction of the Board that he has paid the owner for the improvements as agreed on between them, or as fixed by the aforesaid officers, or officer, or that he has tendered payment as so fixed, or that the owner desires to remove his improvements.

Additional rules.

Section 44. Board May Prescribe Additional Rules and Regulations. The Board shall have the power and authority to prescribe such additional rules and regulations and to do and perform all acts and things not inconsistent with the Enabling Act, the constitution and the statutes of this State as it may deem necessary and proper relating to the leasing of State land for coal mining purposes.

Report.

Section 45. Report and Payment of Royalty. On or before the 15th day of each calendar month the lessee shall make a report to the commissioner in such form as may be prescribed by him, showing the number of tons mined during the preceding calendar month, the price obtained therefor at the mine, the total amount of all sales and containing such additional information as may be required by the commissioner, which report shall be verified by the oath of the lessee and be accompanied by payment of the royalty due the State for such preceding month as shown by the report.

Payment of royalty.

Coal mining permits.

Section 46. Coal Mining Permits for Private Use and for Schools. The Board may in its discretion grant to any resident of this State a permit for a term of not more than one (1) year to mine coal for the use of himself and his family from any coal deposit belonging to the State of Montana and not under lease upon payment to the State of the flat sum of Five Dollars (\$5.00) as a royalty for any amount of coal mined by him not exceeding thirty (30) tons of two thousand (2,000) pounds.

Private use.

Schools.

The Board may also grant a similar one (1) year permit to the Board of Trustees of any school district in this State, provided that if such school district requires more than thirty (30) tons of coal per annum then any additional amount required shall be paid for in advance at the rate of twelve and one-half ($12\frac{1}{2}$) cents per ton. Applications for such permits shall be accompanied by an affidavit to the effect that the coal is not wanted

TWENTIETH LEGISLATIVE ASSEMBLY

for sale or disposal to other parties but that it is wanted for the use of the applicant and his family or for the use of the school district as the case may be.

The granting of such permits shall not prevent the Board from issuing the usual coal mining leases on the land from which the coal under such permit is to be taken. In cases of this kind the permittee shall remove the quantity of coal to which he is entitled as expeditiously as possible and his rights under the permit shall then automatically cease upon the issue of the lease.

Section 47. Disposition of Royalties and Other Receipts. All fees, royalties, bonuses and penalties collected under coal mining leases shall be credited by the Commissioner to the same funds that such receipts under oil and gas leases on such lands would be credited under the provisions of this Act; and in the case of coal mining leases, rentals, and bonuses, if any shall be considered as royalties.

Disposition of funds.

PART FIVE.—B.

Prospecting Permits and Mining Leases.

Section 48. Board May Grant Prospecting Permits. The State Board of Land Commissioners is hereby authorized and empowered in its discretion to issue permits granting the exclusive right to prospect and explore for ores, metals, precious stones and other valuable minerals, except for coal, oil and gas, on any State lands to which the title has been vested and safely secured in the State. This right shall extend to and include all these lands which have been sold but in which such minerals have been reserved by the State of Montana, whether the lands are under certificate of purchase or patents have been issued; provided, however, that in all cases where the lands have been sold with mineral reservations and also in all cases where the lands are under lease for grazing, agriculture or for other purposes, care shall be taken in issuing such prospecting permits to protect the rights of the purchaser or lessee. Wherever deemed necessary a bond may be required for such amount as the Board may fix and determine conditioned for the safeguarding of the rights of such purchaser or lessee and the rights of the State.

Prospecting permits.

Mining leases.

Section 49. Term of Permit; Fees, Penalties; Regulations. These permits shall be issued for such length of time as the Board may determine in each individual

Terms.

SESSION LAWS

case not exceeding five (5) years; shall describe the land on which the prospecting is permitted, not exceeding one (1) section, prescribe the minimum amount of prospecting and exploration work to be performed each year and fix the penalties to be paid the State for failure to perform such work, both as fixed and determined by the Board. The minimum annual prospecting fee shall be Ten Dollars (\$10.00) per section, or part thereof, payable annually in advance. This permit shall not authorize the permittee to remove any of the ores, metals, precious stones or other minerals from the land except for the purpose of testing or assaying the same.

Fees.

Mining leases.

Section 50. Mining Lease. If the prospector discovers ore, metals, precious stones, or other valuable mineral deposits in the lands under his permit and submits satisfactory proof to the Board to this effect he shall have the preference right to a mining lease to such land or the ores, metals, precious stones, and other minerals discovered therein on such terms and conditions as the Board may prescribe; provided, however, that all such leases shall be on a royalty basis and that the royalty shall not be less than five per centum (5%) of the value of the ores, metals, precious stones or other valuable minerals at the mouth of the mine.

Disposition of funds.

Section 51. Disposition of Royalties, Fees and Penalties. All such royalties, fees and penalties shall be credited to the various funds to which they properly belong in the same manner as now provided in this Act for the crediting of oil and gas royalties.

PART FIVE.—C.

Leases and Permits for Limestone, Oil Shale, Clay, Stone, Gravel and Sand.

Issuance of leases.

For what.

Section 52. The Board May Issue Leases. Whenever there are found upon State lands to which the title is vested in the State and which lands have not been sold by the State under certificate of purchase or otherwise, deposits of stone, limestone, oil shale, clay, gravel, or sand valuable for building, mining or other commercial purposes, the State Board of Land Commissioners may in its discretion issue to private persons permits or leases for the removal and disposition of such stone, gravel or sand upon such terms and conditions as the Board may determine; provided, however, that all such leases shall be upon a royalty basis calculated upon the number

of cubic yards removed from the land, and the rates shall be the same that ordinarily would be charged by private owners under similar circumstances, and the fee for issuing the lease shall be the same as for an oil and gas lease. No such lease shall be made for a longer term than five (5) years, and the Board may demand a cash deposit to guarantee the payment of the royalties or demand a surety bond or both such cash deposit and bond as the Board may determine.

Section 53. Disposition of Royalties and Other Receipts. The royalties, fees and penalties received under such leases shall be credited to the various funds to which they properly belong in the same manner as now provided in this Act for the crediting of these receipts under oil and gas leases.

Disposition of funds.

Section 54. Land May Be Leased for Other Purposes. Such portions of the section or other subdivision of the land on which such deposits are located as are not needed for the quarrying or digging and removal of the stone, limestone, oil shale, clay, sand or gravel may be leased for grazing or agricultural purposes the same as other State lands, and in the case that grazing or agricultural leases are issued they shall provide for a right of way across the land for the removal of the stone, limestone, oil shale, clay, gravel, sand or other deposits, but the rights of the lessee shall also be duly protected.

Other purposes for leases.

Section 55. Stone, Gravel and Sand Permits for Public Use. The State Board of Land Commissioners is hereby authorized and empowered in its discretion to issue permits upon such terms and conditions as it may determine, not inconsistent with any constitutional or statutory provision relating to State lands to the State Highway Commission, to the Board of County Commissioners of the several counties of the State and to the governing boards or bodies of cities or towns and of other political subdivisions of the State granting them the right to take, remove and use stone, gravel or sand from any State lands that have not been sold under certificate of purchase or otherwise for the construction, maintenance and improvement of public roads, highways, bridges, streets or alleys. The rights of lessees to the lands on which such stone, gravel or sand may be located shall be properly safeguarded under the terms of the permits.

Gravel and sand permits for public use.

PART SIX.

Granting of Easements for Public Purposes.

Conveyances
and easements
to United
States.

Section 56. **Conveyances and Easements to the United States.** Any land now or hereafter owned by the State of Montana, and needed by the United States in its irrigation and reclamation work, shall upon application made therefor to the State Board of Land Commissioners be conveyed to the United States at the minimum price of Ten Dollars (\$10.00) per acre; and there is hereby granted to the United States over all the lands now owned or hereafter acquired by the State of Montana, an easement for a right of way for ditches, canals, tunnels, telephone and telegraph lines, now constructed, or to be constructed by the United States government, in furtherance of the reclamation of arid lands. All conveyances of State lands shall contain a reservation of such right of way easements. It is further provided that whenever said lands herein granted as a right of way shall cease to be used for such purposes, the same shall revert to the State upon notice to that effect being given to the proper authorities.

School sites
and public uses.

Section 57. **Easements for School Sites and Grounds and Other Public Uses.** The State Board of Land Commissioners is hereby authorized and empowered to grant easements in State lands for school house sites and grounds, for public parks, community buildings, cemeteries and other public uses upon proper applications accompanied by accurate and duly verified plats from the lawfully constituted authorities having charge of such properties. All such sites, grounds or tracts of land shall be rectangular or square in form unless natural obstacles in the land render such form impractical and shall whenever feasible be located at section corners or at a corner of that portion of the section which is owned by the State, and no easement of this character shall cover more than ten (10) acres of land, the acreage to be computed up to the center of the section line. Whenever the site so granted is located at a section corner or at a corner of the part of the land in the section owned by the State, the charge or compensation for the easement in the land shall be not less than twenty-five per centum (25%) above the appraised value of the land; whenever the site is located on a section line but not at a corner the charge or compensation shall be not less than fifty per cent (50%) above the appraised value of the land.

Charges.

Whenever the site is not located on the section line or lines as aforesaid, the charge or compensation to be paid to the State shall be determined by the Board after examination of the land by the chief field agent or one of his assistants and report made by him. The Board shall cause deeds to be issued for all such easements that it may grant.

Section 58. Right of Way for Public Highways and Streets on State Land Section Lines. There is hereby granted to the people of the State of Montana an easement for right of ways for public highways and streets along section lines on all lands now owned by the State or which may hereafter become the property of the State for all public highways and streets of which the center lines follow the section lines bounding such State lands to the extent of one-half the width of such highways or streets, on either side of the section line, or on both sides of the section line, depending upon whether there is State land on one side of the section line only, as is usually the case, or on both sides, which half shall not exceed thirty (30) feet. This easement for such right of ways for public highways and streets shall take effect when the proceedings for the laying out, opening and establishment of such public highways or streets have been completed according to law by the Board of County Commissioners of the county where such public highways or streets are located or by the Board, council or governing body of the city or town within the corporate limits of which such public highways or streets are located; but it shall not be necessary to make the State Board of Land Commissioners or the State of Montana a party to the proceedings for the laying out, opening and establishment of such public highways or streets along section lines bounding State lands. Whenever any such highway or street shall cease to be used as such, this easement shall automatically terminate and the State lands in which it has been granted shall automatically revert to the State.

Public
highways and
streets.

The Board of County Commissioners or the governing body of the city or town, as the case may be, shall notify the Commissioner of State Lands whenever the proceedings for the laying out, opening and establishment of such highway or street have been completed and also when such highway or street has ceased to be used as such, and shall in both cases give an accurate and com-

Notice.

plete description of the public highway or street so established or closed on state land section lines.

Existing high -
ways and
streets.

Section 59. Right of Way Easement Applies to Past Proceedings. This grant of easements for public highways and streets of which the center lines follow the section lines bounding State lands shall also extend and apply to all such highways and streets now laid out, opened and established by the proper authorities whether or not the State Board of Land Commissioners has been made a party to the proceedings or not, and irrespective of whether or not the right of way easements have been granted by the Board, if the lands still belong to the State of Montana.

Certificates
of purchase.

Section 60. Right of Way Easements on Section Lines on State Lands Under Certificate of Purchase. In the case of right of ways for such highways or streets of which the center lines follow the section lines of state lands which have been sold under certificate of purchase but for which patents have not been issued, the owners of the certificates of purchase shall be made parties to the proceedings for the laying out of the highways or streets the same way as the owners of land in fee simple and such holders of certificate of purchase shall have the right to grant such right of way to the full extent of their interest in the land effected; but the State Board of Land Commissioners need not be made a party to the proceedings.

Rights of
ways outside
state land
lines.

Section 61. Easements for Right of Ways Outside State Land Section Lines. Rights of Purchasers. The right of way for public highways on state lands must always follow the section lines when physically practicable. The State Board of Land Commissioners shall be the judge of whether or not it is necessary to deviate from the section lines, and the Board is hereby authorized and empowered to grant easements for right of ways for highways and streets outside the state land section lines through proceedings as follows:

Applications
how made.

Application must be made by the Board of County Commissioners, or by the council or governing board or body of the city or town having jurisdiction, which application shall describe the proposed right of way according to the survey, show the necessity for the proposed highway or street and give such additional information as the Board may require. This application shall be accompanied by two exact copies of the official plat of

the proposed highway or street duly verified by the affidavit of the County Surveyor or County or City Engineer, or other engineer having prepared the same, endorsed thereon. These plats shall show the quantity of land taken by the proposed highway or street from each forty-acre tract or government lot of state land over or through which it passes and also the amount of land remaining in each portion of such forty-acre tract or government lot. When deemed necessary by the Board, the aforesaid plats shall show all these facts for such smaller subdivisions as the circumstances may render desirable for the state.

Upon the filing of such application and plats, the Commissioner of State Lands and Investments shall whenever he deems it necessary cause the proposed right of way to be viewed and examined by the Chief Field Agent or some Assistant Field Agent who shall report his findings to the Board. The Board shall thereupon consider the application and report and take such action as it deems proper, including the fixing of compensation and damages to be paid to the state. The compensation so fixed shall be the full market value of the estate or interest disposed of through the granting of such right of way easement, and the damages shall be the actual damages resulting to the remaining land as nearly as the same can be ascertained. If the right of way is granted according to the plat, then such plat shall become the official plat thereof, and one copy shall be retained in the office of the Commissioner and the other copy shall be returned to the County, City or Town from which it was received. The Board shall cause right of way deeds to be issued for all such easements that it may hereafter grant upon full payment therefor being made.

If the state land over or through which such right of way outside of section lines is applied for, is under certificate of purchase or under sales contract, the purchaser, or his assignee, must be made a party to the proceedings, and his consent in writing to the laying out and establishment of the proposed highway and to the amount of compensation and damages to be paid must be filed with the Board before such right of way shall be granted. The Board shall be the judge of how much of such compensation and damages shall be paid to the state and applied on the certificate of purchase or sales contract and of how much thereof, if any, shall be paid

Board is
judge of
compensation.

to the purchaser, as the circumstances in each individual case may warrant. The provisions of this paragraph shall apply to all grants of right of ways on state lands outside of section lines. The interest and equity of such purchaser or his assignee shall be subject to proceedings in eminent domain.

Railroads and
other purposes.

Section 62. Right of Way Easements for Railroads and Other Purposes. The State Board of Land Commissioners may grant an easement for right of way across or upon any portion of state lands for any ditch, reservoir, railroad, private road, telegraph or telephone line, or for any other public use, as defined in the Code of Civil Procedure; provided, that this section shall not be construed to grant authority to convey any such land, except for the purposes above set forth; and provided further, that whenever lands granted for any of the purposes mentioned in this section shall cease to be used for such purposes, said easement shall forthwith terminate upon notice to that effect to the person to whom such grant was made, served at his last known post office address. The Board shall charge and cause to be collected the full market value of the estate or interest disposed of through the granting of any such easement and also fix, charge and cause to be collected the amount of the actual damages resulting to the remaining land or lands from the granting of such easement as nearly as the same can be ascertained.

Settlement
with lessees.

Section 63. Settlement With Lessees. Whenever any kind of a right of way easement has been granted under this act and the state land in which it is granted is under lease, the Board of County Commissioners, or other authority or corporation or person laying out the right of way shall give due and timely notice to the lessee and shall make just settlement with him for any damages resulting to his improvements or crops or leasehold interests. Upon such settlement being made, the lessee shall open or move any fences that may obstruct the right of way over the lands under his lease and otherwise cooperate in the opening of the right of way. Proof shall be filed with the Board that such settlement has been made before the deed to the easement is issued.

PART SEVEN.

Sale of State Lands.

Sale of lands.

Section 64. Certain State Lands Not Subject to Sale. Lands classified as timber lands shall not be subject to

sale, but timber thereon may be sold and disposed of in the manner provided by law. Lands which in the judgment of the Board are likely to contain valuable deposits of coal, oil, oil shale, gas, phosphate, metals, sodium and, or other valuable mineral deposits, shall not be subject to sale, either the surface land or any of such deposits therein; provided, however, that this shall not be so construed as to prohibit the sale of lands containing sand, gravel, building stone, brick clay or similar materials.

Exemptions.

Section 65. **Mineral Reservations in State Lands.** All coal, oil, oil shale, gas, phosphate, sodium and other mineral deposits, except sand, gravel, building stone and brick clay, in lands belonging to the State of Montana, or which may hereafter become the property of the state, which have not already been reserved by the United States, are hereby reserved to the state. All such deposits are reserved from sale except upon a rental and royalty basis as provided in this act. In the case of lands sold after this act takes effect, a purchaser of any lands belonging to the state or which may hereafter become the property of the state shall acquire no right, title, or interest in or to any of such deposits, except that where the oil and gas have not been reserved by the United States the purchaser of mortgage lands shall be entitled to receive a royalty of one per centum (1%) of all gas or oil produced from such mortgage lands, such royalty to be payable directly to him by the lessee either in gas or oil or in cash as the purchaser may desire and determine; provided, however, that the purchaser of the mortgage land shall not have any right to lease such land or any part thereof for oil and gas exploration or production; the state shall have the sole power to lease the land for all mineral purposes. The state also reserves for itself and its lessees the right to enter upon such lands to prospect for, develop, mine and remove such deposits and to occupy and use so much of the surface of the said lands as may be required for all purposes reasonably extending to the exploring for, mining and removal of such deposits therefrom, but the lessee shall make just payment to the purchaser for all damage done by reason of such entry upon the land and the use and occupancy of the surface thereof.

Mineral
reservations.

These mineral reservations shall not apply to lands that the state has acquired through the foreclosure of mortgages or otherwise acquired in connection with mortgages given to it when the mortgagor or anyone

Reservations
in mortgaged
lands.

claiming under him exercises his right to re-purchase such lands within the statutory period of one year and ninety days from the time that the state so acquired title. In cases of this kind all rights shall go with the land that passed with the land from the mortgagor to the state; but in case that such lands are not so repurchased, then the same shall be subject to these mineral reservations the same as other state lands.

Section 66. Certain Shore Lands not Subject to Sale.

Exemption of
certain shore
lands.

There is also reserved from sale from all state lands bordering on navigable lakes or bordering on such non-navigable meandered lakes as the Board may deem valuable for summer resorts and from all state lands bordering on navigable streams a strip of land which shall include all the land lying between low-water mark and high-water mark and which in addition shall extend in width landward from the line of high-water mark of such lake or stream the full width of the forty (40) acre tract or government lot abutting the line of high-water mark; provided, however, that if the width of such abutting government lot at its narrowest point is less than one hundred (100) feet, then the strip hereby reserved shall extend to and include the next adjoining forty (40) acre tract or government lot. The land reserved from sale by this section shall be subject to the granting of easements the same as other state lands.

Reservations
for lots and
blocks.

The State Board of Land Commissioners may in its discretion cause any part of the lands bordering on such lakes and on navigable streams which are hereby reserved from sale to be surveyed and platted into blocks and lots, the lots to be not less than one hundred and twenty-five feet (125) in width, the width to be measured in the general direction of the abutting water front; but in all such surveys and plats the aforesaid strip of one hundred (100) feet in width along the water front shall be reserved for the use and enjoyment of the public.

Such strips of land bordering on meandering lakes or on navigable streams, except the strip lying between low-water and high-water mark, whether surveyed and platted into blocks and lots or not, may, however, be leased as provided in this act for the leasing of other state lands.

Platted lands
for sale.

Section 67. Certain Lands to Be Platted Before Sale.
Any part of state lands adjacent to cities or towns and

other state lands which in the opinion of the Board may be wanted for residence or business lots shall before sale, at such time as the Board may deem to be for the best interests of the state, be surveyed and laid off in blocks, lots, streets, alleys, avenues, highways, public squares, market places and parks, in conformity with the laws of the state for the survey and platting of townsites and additions thereto, conforming as nearly as may be with the ordinances of such city or town regarding the platting of additions thereto; and the State Board of Land Commissioners must cause correct maps and plats of such lands to be made and recorded when so surveyed and not otherwise. No fee shall be charged by the County Recorder, or by any city officer, for filing or recording such maps or plats, when recorded on behalf of the state.

Before the lands so surveyed and laid off are offered for sale the same shall be appraised, a separate appraisal to be placed on each lot. Such surveyed and platted land may then be sold in the same manner and upon the same terms and conditions as other state lands are sold.

Appraisals.

Section 68. Surveying and Platting Left to Discretion of Board. It shall be entirely optional with the Board whether or not state lands, or any part thereof, shall be surveyed, platted and laid off into blocks and lots as hereinabove provided, as may appear to be for the best interests of the state. All lands of the fourth class as defined by Section 1, Article 17, of the constitution shall, however, be subdivided into lots or tracts of not more than five (5) acres each before being offered for sale and the lots must then be sold alternately as provided by Section 2, Article 17, of the constitution, at regular sales of state lands.

Discretion of board.

When such tracts of five (5) acres each or less have been sold, the Board shall whenever deemed necessary cause the plat thereof to be filed for record with the County Clerk and Recorder of the County in which the land is situated, but if the same purchaser bids in two or more adjoining lots or tracts, all the lots so purchased shall at the option of the purchaser be included in one certificate of purchase.

Recording of plats.

Section 69. Lands Within Federal Irrigation Projects. Whenever state lands are located within the boundaries of federal irrigation projects, the land shall be sold in conformity with the classification of farm units as made by the United States, and all certificates of purchase

Federal irrigation districts.

issued for such lands shall show that the lands are located within a federal irrigation project and are or will be liable for their proper share of the reclamation charges.

Time of sales
and designation
left to board.

Section 70. Board to Decide When to Hold Sales and What Lands to Sell. The State Board of Land Commissioners is hereby vested with the power and authority to decide when sales of state lands are to be held and what state lands are to be offered for sale, subject to the limitations of this act, as the best interests of the state may appear to require; provided, however, that as a general rule no sale of state lands shall be held unless applications have been made for the purchase of lands within one (1) county by prospective purchasers representing at least twelve (12) families.

Who may
purchase.

Section 71. Who May Purchase and How Much. State lands shall be sold only to citizens of the United States or to persons who have declared their intentions to become citizens, or to corporations organized under the laws of this state. No person shall be qualified to purchase state land who has not reached the age of twenty-one (21) years. As far as possible to determine the lands shall be sold only to actual settlers or to persons who will improve the same, and not to persons who are likely to hold such lands for speculative purposes intending to resell the same at a higher price without having added anything to their value. No person or corporation shall be entitled to purchase more than one section of state land, and this area shall not include more than one hundred and sixty (160) acres of land susceptible of irrigation. These limitations as to area and irrigableness shall not apply to lands acquired by the state in connection with the foreclosure of its mortgages.

How much.

Sale by auction.

Section 72. Sale at Public Auction. Where Held. All sales of state lands shall be only at public auction held at the County Court house of the county in which the lands are located; provided, however, that in case no suitable room can be found in such court house at the time for holding the sale, then the sale may be transferred to a more convenient place within a reasonable distance of such court house by public announcement made at the court house at the time fixed for beginning the sale; and provided further that the procedure for the sale of the so-called "mortgage lands" acquired by the state through the foreclosure of mortgages, or ob-

Where held.

tained otherwise in connection with such mortgages, shall be subject to the modifications hereinafter provided.

Section 73. **Notice of Sale.** The commissioner shall cause notice of every such sale to be given by publication in the official county paper of the county where the sale is to be held once each week through four consecutive weeks next preceding the date of sale. Such notice, shall give the day, date and time of day of the beginning of the sale; shall contain a list of all the tracts to be offered for sale showing the township and range in which they are located, describing the same with reference to section number and subdivision of the section, or with reference to block and lot if surveyed, the number of acres in unplatted lands and the appraised value per acre and also the appraised value of each lot. As a general rule non-irrigable farming lands shall be listed in quarter sections; grazing lands may be listed in larger tracts not exceeding one (1) section. These limitations need not apply to mortgage lands.

Notice of sale.

For the convenience of the bidders, the commissioner may assign the tracts advertised a consecutive series of sales numbers and show the sales number of each tract in the notice of sale.

The notice shall also give the terms and conditions of sale, and such additional information as the commissioner may deem useful.

Section 74. **Mortgage Lands to Be Included.** Whenever a sale of state lands is held in any county of the state, all the mortgage lands owned by the state in such county shall be offered for sale at the appraised value and included in the notice of sale herein provided for, whether such mortgage lands have been previously advertised for sale or not, unless the board for good reasons shall direct that such lands shall not be included in the sale.

Mortgaged lands included.

Section 75. **Sales, How Conducted, Proceeds.** At the time fixed for the sale, the lands shall be offered for sale at auction in the order they appear in the notice of sale under the personal direction of the commissioner or the assistant commissioner, one of whom shall be present at the sale, and sold to the highest qualified bidder; provided, however, that no lands shall be sold for less than the appraised value and in no case, except mortgage lands, for less than ten dollars (\$10.00) per acre; pro-

Sales how conducted.

vided, further, that in case the land is offered for sale at public auction, the old lessee need not make a higher bid than others, but shall if bidding an equal amount be given the preference. The lands shall be sold as nearly as practicable according to the subdivisions in which they are advertised, and care shall be taken not to subdivide any tract in such a way as to separate remaining portions from a water supply or from section lines or public highways. The sale may be adjourned from day to day until all the lands advertised have been offered for sale.

Forfeiture

If any successful bidder at such sale refuses or neglects to make the initial payment required to be made on the land purchased by him, he shall forfeit to the state not less than fifty dollars (\$50.00) nor more than one thousand dollars (\$1000.00) to be determined by the State Board of Land Commissioners according to the circumstances of the case. If such forfeiture is not paid when notice of the amount of the forfeiture has been served by the commissioner, the attorney general shall institute a suit for the recovery thereof in the name of the State of Montana.

Proceeds.

The proceeds from the lands sold, including all subsequent payments on the principal, shall be credited to the permanent fund arising from the grant to which it belongs and shall become and forever remain an inseparable and inviolable part thereof. All payments on interest shall be credited to the proper income fund and shall be available for use as provided by law.

Additional rules.

Section 76. Board May Prescribe Additional Rules and Regulations. The State Board of Land Commissioners may prescribe such additional rules and regulations for the conduct of these sales as in its judgment the interests of the state may demand.

Sealed bids.

Section 77. Mortgage Lands May Be Sold on Advertising for Sealed Bids. Mortgage lands may also be advertised and sold at other than the regular sales of state lands at county seats whenever the board so orders, and in all such cases the sale shall be at the office of the commissioner by means of sealed bids. Before mortgage lands can be so sold, notice of the sale containing substantially the same information as the notice for the sale of other state lands, must be given by publication once each week for three (3) successive weeks in the official county paper of the county where the land is located.

Advertising.

Sealed bids shall then be received by the commissioner up to a certain date not less than twenty-one (21) days and not more than thirty (30) days from the date of the first publication of the notice of sale, and this date must be given in the notice. On such date the bids shall be opened and the highest bid accepted if it is for not less than the appraised value and is accompanied by the required initial payment and fees.

Section 78. Mortgage Lands May Be Sold at Private Sale. After mortgage lands have once been advertised for sale either at the office of the commissioner or at a sale of state lands at the county seat of the county where they are located, and the same have not been sold, they may be sold by the commissioner at private sale at any time within two (2) years from the date fixed for the sale under the previous notice to any qualified person who will pay the appraised price as advertised and make the required initial payment.

Private sale
of mortgaged
lands.

Section 79. Terms of Payment. Every purchaser of state land of any class whatsoever shall pay in cash on the day of sale such portion of the purchase price as he may desire but in no case less than ten per centum (10%) of the total sales price, and in case the balance on the purchase price is not an exact multiple of twenty-five dollars (\$25.00), then he shall pay such additional sum as is necessary to reduce the balance to an even multiple of twenty-five dollars (\$25.00); he shall also in all cases pay the sum of five dollars (\$5.00) as a fee for each certificate of purchase to be issued to him.

Terms of
payment.

The balance of the purchase price shall draw interest at the rate of five per centum (5%) per annum, payable annually, and the balance of the purchase price itself shall be payable through a period of thirty-three (33) years on the amortization plan, which is hereby defined as being that plan under which part of the principal is required to be paid each time interest becomes due and payable, and under which this part payment on the principal increases at each succeeding installment in the same amount that the interest payment decreases so that the combined amount due on principal and interest on each due date remains the same until the loan or bond is paid in full: provided, however, that the amount of the last installment may vary from the other installments to the extent resulting from disregarding fractional cents in the previous installments; provided, however, that the

Interest on
deferred
payments.

balance of the purchase price on town and city lots shall be payable on the amortization plan through a period of twenty (20) years; and provided further that the board may at any time fix a shorter period than twenty (20) years for the payment of such balance on town and city lots, and different periods of time may be established for different towns and cities as the best interests of the state may appear to demand.

Conversion to
amortization
certificates.

Section 80. Conversion of Certain Other Certificates to Amortization Certificates. Any certificate of purchase of state lands issued prior to February 13, 1923, and now in effect may be converted into an amortization certificate on the plan set forth in this act and running for a period of thirty-three (33) years from the date of conversion in the case of agricultural and grazing lands, and for a period of twenty (20) years in the case of town and city lots, upon application of the owner of such certificate, if the state board of land commissioners deems the issuance of such new amortization certificate safe and advantageous to the state. The said board may in its discretion allow to be included in the principal of the new certificate a portion of the delinquent installments of principal and interest if any on the old certificate, but there shall be charged and paid penalty interest on all such delinquent installments at the rate of six per centum (6%) per annum from the time they severally became due to the date of conversion; and the total amount due under the old certificate shall be reduced by payment to some multiple of twenty-five dollars (\$25.00) before the issuance of the new certificate: provided, however, that all such converted certificates shall give the state the same lien upon crops and improvements on the land under the certificate as is provided in this act in the case of new certificates of purchase hereafter issued. The giving of such lien to the state in the new certificate shall be an absolute condition for the issuance of the new certificate.

Liens for
payments.

Section 81. Lien on Improvements and Crops for Principal, Interest, Penalty Interest and Taxes. The state shall have a lien prior and superior to all other liens, excepting threshermen's liens and seed liens as specified in Sections 8355 and 8366 of the Revised Codes of Montana, 1921, which shall have priority as specified in Chapter 116 of the Session Laws of 1925, upon all buildings, structures, fences and all other improvements upon the lands so sold and also upon all crops growing upon any

of these lands, and also upon such crops after they have been separated from the lands, for all due and delinquent installments of principal and interest and penalty interest and taxes under the certificate of purchase and also for all installments becoming due during the calendar year in which the crop is harvested, and such lien is hereby expressly reserved. Any person purchasing or otherwise acquiring such improvements or crops or any part thereof, takes the same subject to such lien. Any agent or representative of the department or sheriff of the county in which the land is located, or his deputy may demand of the purchaser or his agent payment of the amounts due the state and if the same are not paid upon such demand, the officer making such demand, or any representative of the department, may forthwith seize such improvements and crops and upon giving three days' notice, sell and dispose of, either at private or public sale, sufficient of the said crops or improvements or of both to pay the amounts due the state together with cost and expenses of seizure and sale.

Section 82. **Approval or Disapproval of Sales.** All sales of state lands, and all sales of timber on state lands, shall be subject to the approval and confirmation by the state board of land commissioners, and no sale shall be deemed completed until after such approval and confirmation. The board shall have the power and it shall be its duty to disapprove any sale which in its opinion would be disadvantageous to the state.

Approval or
disapproval of
sales.

Section 83. **Settlement for Improvements.** Whenever any state land has been sold on which there are improvements belonging to a lessee, and some other person than such lessee becomes the purchaser he shall be required to make settlement with such lessee for all improvements on the land belonging to the lessee before the issuing of the certificate of purchase. All provisions of this act relating to the payment and settlement for improvements on state lands between a former lessee and a new lessee shall apply to the settlement between a lessee and the purchaser.

Settlement of
improvements.

Section 84. **Time of Possession.** In the case of lands under lease the purchaser shall be given possession by the state on March first next succeeding the date of sale and not before unless the lease expires prior to that date, except through special agreement between the purchaser and the lessee.

Time of
possession.

Certificate of purchase.

Section 85. **Certificate of Purchase.** Upon the approval of the sale and receipt of satisfactory evidence of settlement with the former lessee, if any, for improvements on the land, the commissioner shall execute and mail to the purchaser a certificate of purchase signed by the governor as president of the state board of land commissioners and by the commissioner as secretary of the board and attested by the seal of the state board of land commissioners. Such certificate of purchase shall contain the date of sale, the name and post office address of the purchaser, a description of the land, the total purchase price, the amount paid on the day of sale, the balance unpaid and shall also show the amount and due date of each installment of principal and interest to the time of maturity. The certificate shall reserve the easements for right of ways granted by the statutes in favor of the United States and other easements that may have been granted by the board and shall contain the reservations in favor of the state provided for in this act relating to coal, oil and mineral rights in the land.

The certificate shall also contain information in regard to the lien of the state on crops and improvements on the land for installments of principal and interest and taxes; and it shall contain such additional conditions, agreements, and information as the board may deem necessary in order to carry out the intent of this act.

Interest on deferred payments.

Section 86. **Time From Which Balance on Purchase Price Draws Interest.** The balance of the purchase price shall draw interest from the date on which the sale was confirmed and approved by the state board of land commissioners, and all installments on principal and interest shall become due and payable on that date in each succeeding year until payment has been made in full.

Installment payments.

Section 87. **Payments of Installments.** The commissioner shall not be required to accept fractional payments of the installments on certificate of purchase, on account of the complications arising from the division of payments. The purchaser may make payment of one or more installments before the same become due but unless such payments are made at least six (6) months before the installments become due, no reduction shall be made in the interest payments. In case installments on principal and interest are paid more than six (6) months prior to the due date, then the interest from the date of such payment shall be figures upon the balance of the prin-

incipal unpaid after such advance payment has been made up to the date on which it comes due. If for any reason any installment is not paid when due, then the total of such installment, including payment on the principal and payment on interest, shall draw penalty interest at the rate of six per centum (6%) per annum from the date due until the date actually paid. Payment may be made in full at any time before maturity by paying the balance on the principal and interest accrued up to the date of such payment.

Section 88. **Default in Payment of Purchase Price. Cancellation of Certificate.** Whenever any purchaser of state land hereafter sold, or the assignee, shall default for a period of thirty (30) days or more in the payment of any of the installments due on his certificate of purchase, the certificate shall be subject to cancellation and the board shall cause to be mailed to him at his last known post office address a notice of default and pending cancellation which notice shall give him sixty (60) additional days from the date of mailing such notice in which to make payment of the delinquent installment or installments with penalty interest.⁴⁶ If he fails to make such payment within that period the certificate of purchase shall from that date and without further notice be null and void, the duplicate of the certificate in the office of the commissioner shall be cancelled and the land under the certificate shall revert to the state and such land together with all buildings, fences and other improvements thereon shall become the property of the state to the same extent as other state lands and shall be open to lease and sale. ¹⁷

Default in payment.

Cancellation of certificates.

Section 89. **Re-Purchase of Land Upon Which Certificate Has Been Cancelled.** In all cases where a certificate of purchase heretofore issued has been cancelled as provided by Section 88 of this Act upon written application to re-purchase said lands made by the original purchaser, his heirs, assigns, or devisees to the State Board of Land Commissioners filed within one (1) year and ~~ninety (90)~~ ⁶⁰ days from the date of cancellation of said certificate of purchase by the State accompanied by a payment of ten per centum (10%) of the total amount then due the state which total amount shall include the amount remaining unpaid to the state at the time said certificate was cancelled and penalty interest at the rate of six per centum (6%) upon all delinquent installments from the

Repurchase of cancelled certificate land.

date due until the date of re-purchase and any taxes which may have been paid by the state on said lands or which may be delinquent at the time said application to re-purchase is made the State Board of Land Commissioners shall enter into a contract with such original purchaser, his heirs, assigns, or devisees, for the sale of said lands, by which the balance of said sum shall be paid on the amortization plan during a period not exceeding thirty-five (35) years from the date of the execution of the contract as defined by this Act. Payment may be made in full at any time before maturity.

Precedence in application.

Such application shall take precedence over any application to purchase said lands by any person other than said original purchaser, his heirs, assigns, or devisees; provided, however, that the Board shall have in its discretion the power to convey by deed and take a mortgage to cover the balance due on said purchase price in lieu of the sale under contract above provided: This reinstatement shall not have the effect of cancelling any lease that the state may have issued on the land, but the reinstated purchaser shall be entitled to the rents under the lease from the date of such reinstatement, and he may make any arrangements satisfactory to himself and the lessee for the use and possession of the land before the date of lease expiration.

Assignment of certificate.

Section 90. Certificates May Be Assigned. Certificates of purchase may be assigned to a citizen of the United States or to a person who has declared his intention to become such citizen or to a corporation organized under the laws of the State of Montana. Such assignments shall be made on forms to be prescribed by the commissioner, shall be duly acknowledged as other conveyances of real estate, and shall be executed in duplicate, one (1) copy to be filed and retained in the office of the commissioner and one (1) copy to be retained by the assignee. A person shall not be qualified to receive such assignment if the lands he has already purchased from the state together with the lands included in the assignment exceed one (1) section; the assignee must in all respects possess the same qualifications as an original purchaser.

Lost certificates.

Section 91. Lost Certificate. Whenever any certificate of purchase to state lands has been lost or is wrongfully withheld by any person from the owner thereof the rightful owner may make application to the state board

of land commissioners for issuing of a lieu certificate. This application shall be accompanied by an affidavit from the owner of the certificate setting forth the facts in regard to the loss or unlawful withholding of the certificate and by a certificate from the county clerk and recorder of the county in which the land is located showing all instruments of record in his office affecting the title to the land under the certificate. The Board shall thereupon cause a lieu certificate of purchase to be issued to the applicant if in the judgment of the board the facts warrant the issue thereof.

Section 92. **Land Subject to Taxation.** The interest of the purchaser in state lands shall be subject to taxation to the full extent of such interest. The assessor shall assess the purchaser for such percentage of the full and true value of the land as the initial payment on the land and all installments of principal due on the certificate of purchase prior to the first Monday of March of the year for which the land is assessed is of the full purchase price of the land. Provided that the holder of certificate of purchase to lands within irrigation districts shall be liable for the entire tax levied against the land held thereunder on account of such irrigation district.

Land subject to taxation.

The improvements on the land shall be assessed and taxed as other improvements on farm lands.

Taxation of improvements.

On or before the fifteenth (15th) day of March of each year, the commissioner shall furnish the county assessor of each county with a complete list of all state lands sold in his county during the year ending on the first Monday of March of such year. This list shall show the name and address of the purchaser, give the legal description of the land, the acreage contained therein, the total purchase price, the amount paid thereon, and the balance unpaid. It shall also contain tables, or other information, which will enable the assessor to calculate what portion of the full value of the land will be subject to taxation for each succeeding year of the certificate.

Assessor's list.

Section 93. **Purchaser of State Lands May Sign Petitions Relating to Irrigation Districts. Interest Purchaser Subject to Lien.** A purchaser of state lands is hereby authorized and empowered to sign any petition that he may desire to sign for the creation of an irrigation district and

Irrigation district petitions.

Interest
subject to
lien.

the inclusion of the land purchased from the state in such irrigation district and any other petition relating to irrigation districts affecting the land so purchased by him from the state. Such petition or petitions shall have the effect of making all the interest that he then has in such land purchased from the state and all interest which he may subsequently acquire therein subject to the same liens and charges as privately-owned lands under such irrigation district; but if for any reason his certificate to such state lands and his rights thereunder are forfeited and cancelled, no lien or charge of any kind shall then attach to the land.

Proviso in
case of sale.

The interest of a purchaser of state lands in the land purchased shall be subject to the same liens as other real estate; provided, however, that in the case of sale only the interest of the purchaser or of the assignee shall be sold. In the case of any sale under the provisions of this section, including the sale for taxes, the purchaser shall succeed to all the rights of the purchaser from the state under the certificate of purchase and a new certificate of purchase shall be issued to the person entitled thereto, upon satisfactory proof being submitted to the board; provided, however, that in the case of sale under execution or decree of court such new certificate of purchase shall not be issued by the board until the period of redemption from such sale has expired and the sheriff's deed has been issued. In the case of sale for taxes, the new certificate shall not be issued until the tax deed has been issued.

Reverted lands.

Section 94. If Lands Revert. In case any lands sold under the provisions of this act shall revert to the state, for any cause whatsoever, the commissioner of state lands shall notify the assessor and the county treasurer of the county in which the land is situated, and upon the receipt of such notice it shall be the duty of the assessor to cancel any assessment of said land for that year, and of the county treasurer to cancel all taxes remaining unpaid against the land for that and all previous years.

Patents.

Section 95. Patents. When the purchase price has been paid in full together with interest according to the certificate, the owner thereof shall be entitled to receive a patent for the land under such certificate.

TWENTIETH LEGISLATIVE ASSEMBLY

Section 96. **Patents, How Executed.** The governor, and in the case of his absence or inability, the lieutenant governor shall be and is hereby authorized to execute deed or patent of conveyance transferring without covenants any and all lands sold by the state board of land commissioners under the laws of this state when full payment has been made therefor. Such deed or patent shall contain the reservation of easements for right of ways to the United States, reservation of all minerals in the land as provided in this act, and all other reservations to which the particular land conveyed may be subject. In case the land is located within the boundaries of a federal irrigation project, the patent shall contain a lien clause substantially in the following form: "The land hereby conveyed is located within the boundaries of a federal irrigation project and is subject to all liens which the United States may have thereon by reason of its being located under such irrigation project." Such deed or patent shall be attested by the secretary of state, countersigned by the commissioner and have the great seal of the state and the seal of the state board of land commissioners thereto attached, but need not be acknowledged. A certified copy of the record of any such deed or patent shall be received in evidence in all courts of record of this state the same as the original.

Patents how
executed.

Contents.

This section shall not be so construed, however, as to require any reservation in a patent which was not an express or implied reservation in the certificate of purchase pursuant to which the patent is issued; the statutes in effect when such certificate of purchase was issued must govern.

Section 97. **Limitation for Cancellation of Patent.** No action shall be brought to vacate or cancel any patent issued by the state after the expiration of two (2) years from the date of such patent, except upon the ground of fraud.

Patent
cancellation
limitation.

PART EIGHT.

Investments.

A.

General Provisions Concerning Investments.

Section 98. **Investment of Permanent Funds.** All moneys belonging to the public school permanent fund and to the other permanent funds of the educational, charitable and penal institutions of the state, and all

Investment of
funds.

permanent funds subject to the administration of the board under Article XXI of the state constitution shall be safely invested by the state board of land commissioners in bonds of school districts within the State of Montana; in bonds of the several counties and cities of the State of Montana; in bonds of the State of Montana or of the United States; in capitol building bonds of the State of Montana, now issued or which may hereafter be issued; in bonds issued by the federal land banks, in interest-bearing warrants upon the general fund of the state and in interest-bearing warrants upon the general fund, the poor fund, the road fund, or upon the bridge fund of the several counties of the State of Montana, and in interest-bearing school district warrants, and in first mortgages on improved and crop-producing farm lands in this state free from all prior liens and incumbrances; all of such investments to be subject to the regulations and limitations of this act.

Amortization
plan.

Section 99. **Certain Securities to Be Payable on the Amortization Plan.** All bonds issued in this state in which such investments are hereafter made must be issued and payable on the amortization plan; provided, however, that in case there are not sufficient amortization bonds and amortization mortgages available to keep the aforesaid permanent funds invested, then the funds may be invested in other forms of bonds lawfully issued by the State of Montana or any of its political subdivisions; but this provision shall not be so construed as to allow the investment of any of these funds in irrigation district bonds or in any form of improvement district bonds. In negotiating for the purchase of bonds the board shall use its influence towards having the installments of principal and interest become payable semi-annually in June and December of each year as far as practicable and consistent with other statutes.

Conversion of
bonds into
amortization
bonds.

Section 100. **Conversion of Other Forms of Bonds Into Amortization Bonds.** All bonds in which such permanent funds of the state are now invested or in which they hereafter may be invested, whether such bonds are due or not, may be converted into amortization bonds payable through a period of not exceeding twenty (20) years upon resolution duly passed by the board or officers of the political subdivision of the state through which such bonds were originally issued, if the state board of land commissioners deems such change to amortization bonds

to be safe and advantageous to the state and authorizes such change. The interest on such converted bonds shall be such as the state board of land commissioners may fix and determine in each individual case but shall not be less than the rate of interest on the bonds to be converted and shall in no case exceed six per centum (6%) per annum.

Section 101. Purchase of County Warrants or School District Warrants. It shall be entirely optional with the board whether or not any portion of the aforesaid permanent funds shall at any time be invested in county warrants or school district warrants, as the circumstances in each individual case may appear to justify. In case of the investment in such warrants, such warrants must be purchased at face value without payment for accrued interest directly from the county issuing the same in amounts of not less than five hundred dollars (\$500.00) for each purchase; must be issued in the ordinary and regular course of business, and must be registered and drawing interest at the rate provided by law.

County and school district warrants.

Section 102. Investment of Income Funds. Moneys in the public school income fund and in other income funds for which there is no immediate demand, may be invested in state general fund warrants and in county warrants upon the general fund, the poor fund, the road fund, or school district warrants, subject to the limitations prescribed in the preceding section; provided, however, that they shall not be invested in such warrants, unless such warrants will be payable at such time as to make the income available when the funds are to be paid out for the purposes for which they are intended.

Income funds how invested.

Section 103. Approval of Securities. The Board shall not invest in any bonds unless a complete transcript of the proceedings for their issue has been submitted to the Attorney General and his opinion rendered in writing finding that the bonds are lawfully issued and a valid indebtedness of the state, county, city or school district issuing the same.

Attorney General to approve securities.

Section 104. Securities How Paid. Whenever the State Board of Land Commissioners has purchased any bonds, county warrants, or school district warrants, the Commissioner shall upon the final approval and receipt thereof, deliver such securities to the State Treasurer, and shall at the same time write an order to the State

How securities are paid.

Auditor authorizing and directing him to issue his warrant or warrants upon the State Treasurer, payable to the State Treasurer, for the amount invested by the state in such security or securities and for the amount of accrued interest if any. Both the order to the Auditor and the warrant or warrants issued by him to the Treasurer shall show the fund or funds from which payment is to be made, the name and address of the person to whom it is to be made and the purpose of the payment. Upon the receipt of the securities and the warrant or warrants from the Auditor the State Treasurer shall promptly issue his check or checks and mail to the person entitled thereto.

Preservation
and record of
securities.

Section 105. Treasurer to Preserve Securities and Keep Records. The State Treasurer shall safely keep and preserve all such securities and shall keep an accurate and complete record thereof; he shall notify the proper official or persons of delinquent payments, and shall keep accurate and complete account of all payments made.

PART EIGHT.

B.

Management and Disposition of State Farm Loans Made Before This Act Takes Effect.

Conversion to
amortization
mortgages.

Section 106. Conversion Into Amortization Mortgages. Whenever any state farm loan owned by the state when this act goes into effect becomes due or delinquent, the mortgagor or the assignee or vendee may make application to the State Board of Land Commissioners to have the loan converted into a thirty-three (33) year amortization loan and mortgage, as defined in this act, to draw interest at the rate of six per centum (6%) per annum and to be secured by a first mortgage on the land under the original mortgage and by additional lands if he has additional lands free from prior liens and incumbrances, the amortization mortgage to be in such form as the State Board of Land Commissioners may prescribe. The Board may in its discretion permit delinquent interest, penalty interest and also any sums of money that the state has advanced under the mortgage to be included in the principal of the new loan and mortgage, if the State Board deems the including of such delinquent interest and other payments made under the mortgage to be safe and advantageous to the state. Nothing herein contained shall be so construed as to make it obligatory

upon the Board to permit a loan to be so converted into an amortization loan and amortization mortgage. The Board shall at all times do what in its judgment appears to be for the best interest of the state and shall proceed to have the loan foreclosed if that appears to be the safest course to pursue. The provisions of this section shall also apply to non-delinquent mortgages as far as applicable.

Section 107. Lien on Crops on Mortgaged Lands. The state shall have a lien prior and superior to all other liens, excepting threshermen's liens and seed liens as specified in Sections 8355 and 8366 of the Revised Codes of Montana, 1921, which shall have priority as specified in Chapter 116 of the Session Laws of 1925, upon all crops growing on lands given it as security for any such amortization loan converted from another loan and also upon such crops after they have been separated from the land for any installment or installments of principal or interest due or delinquent on the loan together with penalty interest and also for all such installments becoming due during the calendar year in which such crops are harvested, and such lien is hereby expressly reserved. Any person purchasing or otherwise acquiring such crops, or any part thereof, takes the same subject to such lien.

Priority of
state lien
on crops.

Any officer, agent or person, empowered to represent the department is hereby authorized to seize such crops and upon giving three days' notice to sell, either at private or public sale, sufficient of the said crops to pay the amounts due and delinquent under the mortgage together with costs and expenses of sale. Every such amortization mortgage shall contain a reference to this lien on the crops.

Sale of crops.

Section 108. Attorney General to Take Charge of Delinquent Loans and Mortgages. Whenever any farm loan owned by the state when this act goes into effect becomes delinquent for more than one (1) year, and the mortgagor and his vendees fail to pay such loan and fail to have it converted into an amortization loan and mortgage, the Commissioner shall notify the Attorney General of the default in the conditions of the mortgage, and the Attorney General shall then take full charge of such mortgage, and of all such mortgages, and shall proceed to foreclose such mortgages in the name

Attorney
General to
foreclose.

of the state by action in the manner provided by law for the foreclosure of mortgages upon real estate. The Attorney General may, however, with the permission of the State Board of Land Commissioners, given in writing in each particular case, permit the mortgagor or his vendee to convey the land under the mortgage by quit claim deed or other conveyance in place of securing title through foreclosure proceedings, if the lands are free and clear of all other liens and encumbrances except liens for taxes.

Sheriff's deed
in state.

Deficiency.

Mortgagor may
repurchase.

Section 109. Sheriff's Deed May Be Taken by State; Deficiency Judgment. If at the foreclosure sale, no person bids the full amount due the state under the mortgage including all accrued interest on the loan, all taxes paid by the state under the mortgage and taxes unpaid on the land, if any, and any expenses incurred by the state under the mortgage together with interest on all these items, and the costs and expenses of the foreclosure sale, all as allowed by the court, then in such case the land may either be sold for whatever reasonable sum it will bring and a deficiency judgment taken against the mortgagor or mortgagors, or the state may bid in the land for what it is reasonably worth to the state and a deficiency judgment taken for the balance, as the best interests of the state may appear to demand.

Section 110. The Mortgagor and Parties Claiming Under Him May Repurchase Lands. Upon written application made to the State Board of Land Commissioners within one (1) year from the date of the sheriff's sale of the land to the state, or within one (1) year from the date of the quit claim deed or other conveyance to the state, by the original mortgagor or his heirs or assigns or other parties in interest of record, the State Board may permit such original mortgagor or other person as aforesaid to repurchase the land for the full amount of the judgment of the state together with interest thereon at the rate of six per centum (6%) per annum from the date of judgment to the date of repurchase, or in the case of quit claim deed or other conveyance, for the full amount of the claim of the state on the date thereof together with interest thereon at the rate of six per centum (6%) per annum up to the date of repurchase, upon the following terms and conditions, to-wit:

The person so repurchasing the property shall pay in cash ten per centum (10%) of the entire judgment of

the state against the land or of the claim of the state on the date of the quit claim deed or other conveyance together with interest thereon at the rate of six per centum (6%) per annum up to the date of such repurchase, and if such ten per centum (10%) does not leave a balance which is an even multiple of twenty-five dollars (\$25.00) then the purchaser shall pay such additional amount as will reduce the balance to an even multiple of twenty-five dollars (\$25.00); the balance of the repurchase sum shall draw interest at the rate of five per centum (5%) per annum payable annually and shall be payable on the amortization plan as defined in this act during a period of thirty-three (33) years. Such repurchase contract shall be in such form and shall contain such reservations and conditions as the State Board of Land Commissioners may prescribe not inconsistent with law and shall be subject to the same provisions with regard to liens on crops on the land under the contract as is provided in this act in the case of former mortgages converted into amortization mortgages.

Repurchase
how made.

Section 111. County Commissioners to Release Certain Liens. The Board of County Commissioners of the several counties of the state are hereby empowered and directed to release and satisfy of record any seed loan mortgage, drouth relief lien, or other similar instrument appearing on the county records as a second mortgage or lien against any lands on which the state holds a first mortgage whenever the Attorney General shall request such cloud on the state's title to be removed and cancelled.

County
commissioners
may release
certain liens.

Section 112. County Attorneys to Represent the State.

When so requested by the Attorney General, the County Attorney of each county in the state shall represent the state in all foreclosure proceedings, collections of delinquent rentals, actions for trespass on state lands and in all other state land matter that may arise in his county. The County Attorneys shall not be entitled to charge the state any compensation for such services beyond their regular salaries.

County
Attorneys to
represent state.

PART NINE.

Miscellaneous Provisions.

Section 113. Acceptance of Federal Land Grants. The federal land grants made to the State of Montana through the so-called Enabling Act having already been accepted as a whole through the adoption of the State

Acceptance of
Federal land
grants.

Constitution and specifically by Subdivision 7 of Ordinance No. 1 thereof, the State Board of Land Commissioners is hereby authorized to accept any grant of lands from the United States to the State of Montana hereafter made in carrying out the provisions of the Enabling Act and also any other grant for any special purpose that may be made by the United States to the State of Montana. Any acceptance by the State Board of Land Commissioners on behalf of the State of Montana, that has taken place prior to this act, of lands granted by the United States to the State of Montana is hereby ratified, confirmed and approved.

Gifts, etc. to
state.

Section 114. Gifts, Donations, Grants, Legacies and Devises to the State. The State Board of Land Commissioners is hereby authorized and empowered to accept on behalf of the state from any natural person gifts, donations, grants, legacies and devises having a value of not less than two hundred fifty dollars (\$250.00) from each person for any purpose authorized by Article XXI of the Constitution. All lands passing to the state under these provisions or through the operation of law, shall be managed as other state lands and the rents and earnings shall be applied in accordance with the object and purpose specified by the grantor, subject to all constitutional limitations. All money realized from the sale of such lands and from other property and all gifts, donations, grants, legacies, and devises made in money, or the equivalent of money, shall be administered by the Board for the benefit of the specific purposes designated by the person from whom they were received as provided by Article XXI of the Constitution and as further regulated by this act. The provisions of this section shall apply to gifts, donations, grants, legacies and devises already made to the state and now under the administration of the Board if not contrary to any specific provisions made therein by the persons from whom they were received.

Correction of
errors.

Section 115. Board Authorized to Correct Errors. The State Board of Land Commissioners is hereby authorized, empowered and directed to cause to be corrected any and all errors, mistakes, and misdescriptions in any and all deeds and conveyances of property to the State of Montana; and in order to carry into effect the provisions hereof all deeds or such other conveyances as may be necessary shall be made and executed in the manner provided for the execution of patents by the state. The said

Board is also authorized and empowered to cause to be corrected any error or errors in leases, certificates of purchase, patents and other conveyances of property from the state upon satisfactory proof that an error or mistake has been made.

Section 116. Money Paid by Mistake to Be Refunded. If any money has been erroneously paid or shall hereafter be erroneously paid to the state on any permit, lease, certificate of purchase, patent or loan or in any other transaction, it shall be the duty of the State Board of Land Commissioners to cause such money erroneously paid to the state to be refunded to the person entitled thereto from the proper fund.

Refund of
money paid
by mistake.

Section 117. Who May Not Buy or Lease State Lands. It shall be unlawful for any member of the State Board of Land Commissioners, or any person or persons appraising lands, or in the employ of the state for the selection, classification, appraisal, sale, or leasing of any state lands or the timber thereon, or of any person connected with the State Land Office as an officer or employee, to purchase or lease, directly or indirectly, any of the land of the state or any timber thereon.

Who may
not buy.

Section 118. Violations of This Act Classified. Any officer, employee or representative of the State of Montana who directly or indirectly accepts any money or any other valuable thing, except his regular and lawful compensation, for performing or not performing an official act under the provisions of this act, or for modifying the performance thereof shall be guilty of a felony; any officer, employee or representative of the state who knowingly and wilfully makes any false classification or appraisal of any state land, or of any land offered the state for sale or offered as security for a loan from the state, or who falsely classifies or scales any timber on state lands or from state lands, or any timber in which the state is interested, or who knowingly and wilfully makes any false report of any such classification or appraisal or scaling shall be guilty of a felony; any officer, employee or representative of the state who otherwise violates any of the provisions of this act and such violation results in a loss to the state of one thousand dollars (\$1000.00), or more, shall be guilty of a felony; but if such violation results in a loss to the state of less than one thousand dollars (\$1000.00) or in no pecuniary loss, then he shall be guilty of a misdemeanor.

Classification
of violations
under act.

Penalties.

Section 119. **Punishments.** Any officer, employee or representative of the state who is found guilty of a felony as defined in the preceding section shall be punishable by imprisonment in the state penitentiary for not less than one (1), nor more than ten (10) years or with a fine which shall neither be less than five hundred dollars (\$500.00) nor less than twice the amount of the loss that resulted to the state through the crime of which he has been convicted, or by both such imprisonment and fine. Any officer, employee or representative of the state who is found guilty of a misdemeanor as defined in the preceding section shall be punishable by imprisonment in a county jail for not to exceed one (1) year or by a fine which shall neither be less than one hundred dollars (\$100.00) nor less than twice the amount of the loss that resulted to the state through the crime of which he has been convicted, or by both such imprisonment and fine.

Fees.

Section 120. **Fees.** The Commissioner of State Lands and Investments is hereby authorized and empowered and it is hereby made his duty to charge and collect the following fees:

Issuing Miner's prospecting permit—ten dollars (\$10.00) for each permit, or such greater fee as the Board may fix in each case.

Issuing any other permit—one dollar (\$1.00).

Issuing any lease with or without bond—two dollars and fifty cents (\$2.50).

Issuing any certificate of purchase or lien certificate or converted certificate or purchase contract—five dollars (\$5.00).

Approving and entering assignment of lease or certificate of purchase—one dollar (\$1.00).

Deed for right of way easement or other easement—five dollars (\$5.00).

Patent to any land sold—five dollars (\$5.00).

Certified copy of any of the instruments above enumerated, one-half the fee required for issuing the original instrument.

Making township plats showing the state lands therein and giving other information, such fee as the board may fix to be graduated according to the amount of work required.

Certified copy of any other instrument than those above enumerated or of the records of his office shall be furnished at the rate of twenty cents (.20) per folio of one hundred (100) words and one dollar (\$1.00) for the certificate.

The Board shall fix the fees to be charged and collected for specific services by the commissioner not enumerated in this section.

Section 121. Heading, Subtitles, and Captions No Part of the Act. The headings and subtitles of the various divisions and subdivisions of this act and the captions of the various sections shall not be regarded as any portion of the act itself; they are used simply for the purpose of conveying a general idea of the subject matter appearing thereunder.

Section 122. Findings of Unconstitutionality. Effect Of. If any subdivision, section or part of section of this act should be found to be unconstitutional by the Supreme Court of this State, such finding of unconstitutionality shall not affect the remainder of the act but such remainder shall remain in full force and effect and shall be carried out, and the State Board of Land Commissioners is hereby specifically charged with the duty of bridging over as far as possible any gap which might result in case any portion or portions of this act should be found unconstitutional by exercising the general grant of powers given to it by the Constitution of the State.

Saving clause.

Section 123. Repeal. Section 207, Section 1805, Sections 1809 to 1829, both inclusive; Section 1840, Sections 1843 to 1871, both inclusive; Sections 1882 to Section 1911, both inclusive; Section 1918, all of these sections being of the Revised Codes of the State of Montana of 1921, and Section 4014 of the Revised Codes of Montana of 1921, as amended by Chapter 147 of the Laws of the Eighteenth Legislative Assembly; and Chapter 94 of the Laws of the Eighteenth Legislative Assembly; and Chapters 90, 134, 168 and 190 of the Nineteenth Legislative Assembly of the State of Montana, and all other acts and parts of acts in conflict with any of the provisions of this act are hereby repealed.

Statutes repealed.

Approved March 8, 1927.



